

HOUSE BILL NO. 399

INTRODUCED BY T. FUREY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PRINCIPLES FOR PAYMENTS TO PROVIDERS WHO CONTRACT WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO OFFER CERTAIN SERVICES; ESTABLISHING A METHODOLOGY FOR REVIEWING AND SETTING PROVIDER REIMBURSEMENT RATES; REQUIRING THE DEPARTMENT TO COLLECT AND ANALYZE RATE-RELATED INFORMATION; AND AMENDING SECTIONS 53-10-201, 53-10-202, 53-10-203, 53-10-204, 53-10-211, AND 53-10-212, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-10-201, MCA, is amended to read:

"53-10-201. Legislative findings, purpose, and intent. (1) The legislature finds that services provided by the department to persons who are living in a community setting outside of state institutions and who are persons with developmental disabilities, are mentally ill, or are elderly or very young are essential services and the essential nature of the services is not diminished because the services are provided by contracts. Because the services provided by contracts are many and are important to the well-being of Montana residents who can least care for themselves, the legislature finds that it is necessary to establish a system under which provider services, the costs of providers, and the reimbursement rates paid to providers are analyzed and monitored on a regular basis to ensure that state funding is appropriately expended, that consumers' and taxpayers' expectations are attended to, and that the providers of the services are treated fairly.

(2) The purpose of this part is to provide a regular, predictable, and equitable mechanism under which contracted services, costs, and reimbursement rates are given optimum attention by the department. The legislature does, however, retain its constitutional duty to enact or amend law concerning contracted services, make appropriations for contracted services through funding of department programs, and review department contracted service programs through the mechanism provided in this part. This part is not intended to restrict the legislature in making its appropriate policy and fiscal judgments concerning the value of department programs or services.

(3) It is the intent of the legislature that the department shall conduct a periodic analysis of both existing

provider reimbursement rates and the factors relevant to provider reimbursement rates pursuant to 53-10-211.

~~(3)~~(4) It is the intent of the legislature that to the greatest extent practicable, the commission should:

(a) establish an open and defensible process for conducting its work;

(b) create a set methodology or protocol, in accordance with [section 6], through which provider reimbursement rates can be recommended for a service, service level, or population of service consumers served by a provider and the department;

(c) recommend a list of reimbursable expenses for every service and service level based upon the expenses necessary to provide that service or service level and comply with the licensure, contracts, and administrative rules that govern that service or service level;

(d) recommend rate equity among service levels within a group of services and between different groups of services; and

(e) recommend the best and most cost-effective method of regulating and auditing provider services."

Section 2. Section 53-10-202, MCA, is amended to read:

"53-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the commission on provider rates and services established in 53-10-203.

(2) "Department" means the department of public health and human services established in 2-15-2201.

(3) "Director" means the director of the department.

(4) "Provider" means an entity that contracts with the department to offer services to others.

(5) "Relevant market rate" means a rate that is based on a comparison of rates for similar services in states with similar economies.

~~(5)~~(6) "Services" means those services paid for by the department for:

(a) a child pursuant to Title 41, Title 42, chapter 3, or Title 52, chapter 2; or

(b) a child or an adult in a community or long-term care setting and not in a state institution, pursuant to Title 53."

Section 3. Section 53-10-203, MCA, is amended to read:

"53-10-203. Commission on provider rates and services. (1) The department shall form an advisory commission to be known as the commission on provider rates and services to provide information to the department concerning provider services, costs, and reimbursement rates. The commission membership must

1 include a maximum of 15 individuals representing providers, consumers of provider services, and family members
2 of consumers and is as follows:

3 (a) at least three providers;

4 (b) at least three of a combination of consumers of provider services and family members of consumers;

5 (c) two employees of the department;

6 ~~(d) one representative from the legislative fiscal division;~~

7 ~~(e)~~(d) one representative from the governor's office on budget and program planning;

8 ~~(f)~~(e) subject to 5-5-234, one member of the majority party and one member of the minority party of the
9 house of representatives; and

10 ~~(g)~~(f) subject to 5-5-234, one member of the majority party and one member of the minority party of the
11 senate.

12 (2) A representative of the legislative fiscal division must be provided with all materials provided to the
13 commission and must be offered an opportunity to comment on matters before the commission.

14 ~~(2)~~(3) Except as provided in this section, the commission is subject to the provisions of 2-15-122.

15 ~~(3)~~(4) Except as provided in this section, members shall serve for a term of 2 years and may be
16 reappointed by the appointing authority for one additional term. A member appointed to fill an unexpired term may
17 be appointed for an additional two terms. The appointing authority shall stagger the first terms of the first board
18 to terms of 2 to 4 years. Members appointed to represent state departments, offices, or other state bodies may
19 be appointed and reappointed as the department determines necessary.

20 ~~(4)~~(5) The commission shall elect a presiding officer and vice presiding officer and by vote determine
21 its rules of operation. The commission shall meet at the call of the presiding officer, who shall determine meeting
22 times in consultation with the department.

23 ~~(5)~~(6) The commission is allocated to the department for administrative purposes only as provided in
24 2-15-121."

25
26 **Section 4.** Section 53-10-204, MCA, is amended to read:

27 **"53-10-204. Duties of commission on provider rates and services.** (1) The commission shall conduct
28 an ongoing review of provider services, costs, and reimbursement rates. The review must be made without regard
29 to the source of funds for reimbursement payments.

30 (2) The commission shall consult with the director concerning provider services, costs, and

1 reimbursement rates subject to its review but shall make independent determinations of those matters within its
2 authority. The commission shall establish a consistent and impartial process for determining the order in which
3 provider services, costs, and reimbursement rates will be reviewed by the commission ~~and the methodology that~~
4 ~~the commission will use in its review.~~

5 (3) The commission shall take into account the work of other advisory groups or councils working with
6 the department on subjects concerning its authority and make recommendations to the director and appropriate
7 members of those groups or councils concerning the subject and timing of the work of those groups or councils
8 that will assist the commission and those groups or councils to exercise their legal or other authority and achieve
9 their purpose.

10 (4) In conducting its review and recommending new or altered provider reimbursement rates, the
11 commission shall also consider:

- 12 (a) the need for the department to limit expenditures to appropriations;
- 13 (b) existing and future contracts with the department;
- 14 (c) state and federal laws, rules, and regulations; and
- 15 (d) the intention of the legislature to live within available revenue.

16 ~~—— (5) In reviewing existing reimbursement rates and recommending new or altered reimbursement rates~~
17 ~~to be paid to providers, the commission shall consider the following factors:~~

- 18 ~~—— (a) the level of financial risk taken by a provider in providing services;~~
- 19 ~~—— (b) the complexity of the provider's services;~~
- 20 ~~—— (c) the capital investment made by the provider;~~
- 21 ~~—— (d) the administrative overhead in the provider's business; and~~
- 22 ~~—— (e) any other matter affecting the cost of the provider's services."~~

23
24 **NEW SECTION. Section 5. Principles for provider rates.** The commission, in its role of reviewing and
25 recommending provider reimbursement rates, and the department, in its role of setting provider reimbursement
26 rates, shall use the following principles:

27 (1) Except as provided in Title 18, chapters 2 and 4, state agencies shall treat the procurement of
28 services provided to persons living in a community setting outside of a state institution with the same procedures
29 used for the procurement of other government services and goods.

30 (2) The department shall consider the reasonable costs of meeting applicable federal and state

1 regulations.

2 (3) Rates must be driven by standards established for the desired outcomes of the services provided.
3 The agency responsible for procuring the services shall establish the applicable standards for desired outcomes.

4
5 **NEW SECTION. Section 6. Methodology for reviewing and setting provider reimbursement rates.**

6 (1) (a) The department shall establish appropriate methodologies for reviewing costs and reimbursement rates
7 for providers of direct care and supportive services in each of the following service areas:

8 (i) children's mental health services;

9 (ii) adult mental health services;

10 (iii) developmental disabilities;

11 (iv) services provided to a child in the legal custody of the state pursuant to Title 41, chapter 3; and

12 (v) senior and long-term care services.

13 (b) The department may establish by rule the services that it may exclude from its methodologies
14 because the services are:

15 (i) delivered on an individual basis by licensed health care providers;

16 (ii) used infrequently; or

17 (iii) not typically included in the rate-setting system for services covered under this part.

18 (2) The methodologies established under this section must be objective, predictable, and balanced and
19 equitable, as evidenced by consideration of the following factors:

20 (a) whether the provider has created reasonable access to services for the clients being served;

21 (b) the quality of services provided;

22 (c) provider networks;

23 (d) equitable reimbursement among provider types;

24 (e) provider occupancy rates;

25 (f) other revenue received by the provider; and

26 (g) good stewardship of taxpayer resources.

27 (3) The department shall establish appropriate methodologies for setting provider reimbursement rates
28 by considering the reasonable and allowable costs of providing quality care and services. These costs include
29 but are not limited to:

30 (a) the results of the data collection and analysis conducted by the department as provided in 53-10-211;

- 1 (b) the relevant market rate for reasonable and allowable direct costs;
- 2 (c) the relevant market rate for any applicable indirect costs, which may include but are not limited to the
- 3 reasonable and allowable costs of:
- 4 (i) providing case management;
- 5 (ii) owning and operating property and facilities, including administrative overhead in the provider's
- 6 business;
- 7 (iii) obtaining required licenses;
- 8 (iv) complying with administrative rules;
- 9 (v) complying with contract requirements; and
- 10 (vi) meeting personnel needs, including professional development and certification needs;
- 11 (d) the level of financial risk taken by a provider in providing services;
- 12 (e) the complexity of the provider's services; and
- 13 (f) any other matter affecting the cost of the provider's services.
- 14 (4) The commission shall use the methodology principles established in this section when reviewing
- 15 existing provider reimbursement rates and recommending new or altered provider reimbursement rates.
- 16

17 **Section 7.** Section 53-10-211, MCA, is amended to read:

18 **"53-10-211. Department to assist and cooperate with commission on provider rates and services**

19 **-- records privacy -- data collection and analysis required.** (1) The department shall provide to the

20 commission the maximum assistance that may practicably be made available to the commission and shall provide

21 the commission with the necessary equipment, records, and other material that are both necessary and helpful

22 for the commission to achieve the purposes of this part, including records and other material concerning past,

23 current, and potential provider services, costs, and reimbursement. In providing and considering those records

24 and materials, the department and the commission shall make whatever changes in provider or consumer

25 information that are necessary to comply with lawful requirements for the privacy of the service providers and

26 consumers.

27 (2) (a) As part of the methodology for reviewing and setting provider reimbursement rates pursuant to

28 [section 6], the department shall periodically collect and analyze data about providers and populations in the

29 following areas of services:

- 30 (i) children's mental health services;

1 (ii) adult mental health services;

2 (iii) developmental disabilities;

3 (iv) services provided to children in the legal custody of the state pursuant to Title 41, chapter 3; and

4 (v) senior and long-term care services.

5 (b) The department shall update the data for each area listed in this subsection (2) every 2 years after
6 completion of the initial data collection and analysis.

7 (3) The department shall:

8 (a) analyze and compare all data available on the actual cost of providing services;

9 (b) collect, analyze, and compare the rates paid by private purchasers for services that are the same
10 as or similar to those paid for by federal or state funds;

11 (c) conduct cost-of-care analyses for all service types;

12 (d) collect and analyze information on the percentage of total provider revenue that is derived from
13 federal or state funds;

14 (e) collect information related to access to and trends in care; and

15 (f) assess the impacts of changes in reimbursement on the use of services and the quality of care.

16 (4) The department shall annually report the information and analysis required in this section to the
17 commission.

18 (5) As part of the data collection and analysis process, the department shall establish a process with
19 providers for accountability, performance, and communication purposes."

20
21 **Section 8.** Section 53-10-212, MCA, is amended to read:

22 **"53-10-212. Commission findings, recommendations, and reports.** The commission shall:

23 (1) make recommendations and reports concerning its activities and the results of its review to the
24 director at those times ~~as that~~ the commission determines; and

25 (2) make findings and recommendations and prepare a report to the legislature, in the manner provided
26 in 5-11-210, on the subjects of its review; and

27 (3) report its findings and recommendations to the children, families, health, and human services interim
28 committee and the legislative finance committee each interim."

29
30 **NEW SECTION. Section 9. Implementation schedule for data collection and analysis.** The

1 department shall stagger the initial data collection and analysis required in 53-10-211 over a period of 5 years.

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3 NEW SECTION. **Section 10. Codification instruction.** [Sections 5 and 6] are intended to be codified
4 as an integral part of Title 53, chapter 10, part 2, and the provisions of Title 53, chapter 10, apply to [sections 5
5 and 6].

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